IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : May , 2007

1. L.P.A No.1441 of 2001

State of Punjab & another

.....Appellant

through Mr. A.G.Masih, Sr.DAG, Punjab

v.

Raghbir Singh

.....Respondent

through Mr.K.S.Kapur, Advocate.

2. C.W.P No.9646 of 2000

Sohan Lal Modi & others

.....Petitioners

through Mr. D.S.Patwalia, Advocate

v.

The State of Punjab & others

.....Respondents

through Mr.A.G.Masih, Sr.DAG, Punjab

3. C.W.P No. 539 of 2001

Sardool Singh & others

.....Petitioners

through Mr. K.S.Kapur, Advocate

v.

State of Punjab & others

.....Respondents

through Mr.A.G.Masih, Sr.DAG, Punjab

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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This order shall dispose of L.P.A No.1441 of 2001, CWP No.9646 of 2000 and CWP No.539 of 2001, as common questions of law and fact are involved. For the sake of convenience, facts are being extracted from L.P.A No.1441 of 2001.

By way of the present Letters Patent Appeal, the State of Punjab and another impugn the judgment, passed by the learned Single Judge, dated 5.3.2001, whereby the order, dated 30.11.1998, passed by appellant No.1, was quashed and the appellants were directed to give benefit to the respondent herein, in accordance with recommendation, made by the Third Punjab Pay Commission.

The dispute that requires adjudication in the present appeal, is whether pre 1.1.1986 retirees, would be entitled to a notional special pay of Rs.400/- per month or the amount of special pay being actually drawn by them, prior to 1.1.1986 i.e Rs.200/- per month, while calculating their emoluments.

Admittedly, the respondent retired from service prior to 1.1.1986. At the time of retirement, he was drawing a fixed special pay of Rs.200/-, in addition to his salary. The IIIrd Punjab Pay Commission's report was accepted by the State of Punjab and implemented. As regards special pay, the Pay Commission recommended that the existing rate of special pay, wherever already attached with the existing scale of pay of a post, would stand doubled, subject to a maximum of Rs.500/- w.e.f 1.1.1986, or the date from which special pay had been sanctioned, whichever was later. In order to lay down a policy on the subject of fixation of notional pay and computation of pension of pre 1.1.1986 pensioners, the Punjab Government issued Memo. No.1/7/98-IFP3/14808,

dated 19.11.1998. Paragraph 1(iii) of the aforementioned Memo. reads as follows:-

> "The notional pay as fixed on Ist January, 1986 shall be treated as average emoluments for determination of pension and as pay last drawn for the purpose of computing family pension. The pension and family pension shall then be calculated in accordance with the provisions of Punjab CSR Vol.II and other relevant rules notified vide Punjab Government letter No.1/15/89-IFP-XII/8078, dated 31st August, 1989, as applicable w.e.f Ist January, 1986."

The respondent received a letter, dated 15.9.1998 titled "Revision of Pension/Family Pension of Pre-01.01.86-Pension-case of Shri Raghbir Singh, Under Secretary (Retired)". Paragraph 7 of a calculation sheet, enclosed with the aforementioned letter, revealed that special pay had been calculated at Rs.200/- per month, as drawn by the respondent, and not as recommended, namely, double the amount drawn upto a maximum of Rs.500/-. The respondent submitted a representation to appellant No.2 on 29.9.1998, ventilating his grievance and claiming that the element of special pay of Rs.400/- had not been taken into consideration, while working out revised pension. Appellant No.2 took up the matter with appellant No.1, who, vide letter No.14/19/98-IV-Admn.III/13750, dated 30.11.1998, informed appellant No.2 that so far as pre 1.1.1986 pensioners were concerned, the decision was contained in paragraph 2 of the aforementioned letter. The said decision reads as follows:-

> "It is, therefore, requested that while calculating

> pension/Family Pension of all pre 1.1.86 pensioners/family pensioners of the above mentioned posts, the element of Special Pay should be added in the Notional Pay. The basic pay of Sh. Raghbir Singh was revised from Rs.1640/- to Rs.1700/- P.M after his retirement consequent upon the grant of selection grade on the post of Supdt. (copy enclosed). Therefore, his pension has been worked out on his basic pay of Rs.1700/- + Rs.200/- Spl. Pay P.M. Similar action may kindly be taken regarding counting of Special Pay in respect of all such cases already sent. Accordingly, a revised calculation sheet in respect of Sh. Raghbir Singh alongwith his option form is sent herewith for fixing his pension."

Aggrieved by the aforementioned letter, the respondent preferred representations, dated 7.6.1999 and 10.6.1999, whereafter he filed the writ petition, namely, CWP No. 15384 of 1999.

The respondent urged, before the learned Single Judge, that the State Government erred, while confining the special pay of pre 1.1.1986 retirees to Rs.200/-. While revising payscales of pre 1.1.1986 retirees, their emoluments were notionally fixed as on 1.1.1986 and, therefore, while calculating notional emoluments, the special pay should also have been notionally granted, in accordance with the recommendation made by the Pay Commission. It was also contended that the Government could not justify different treatment with respect to special pay for those who had actually worked and drawn special pay after 1.1.1986 and those, who had

retired prior to 1.1.1986 and Notional benefit of revised pay scale was granted irrespective of the date of retirement. It was further contended that as special pay is a part of emolument, the action of the State Government was unjustified.

The State of Punjab-appellant No.1 herein, in its counter affidavit, pleaded that the element of special pay to pre 1.1.1986 retirees was confined to the pay, actually drawn. In view of government instructions, and in the light of the recommendations of the IVth Punjab Pay Commission, clause (a) of Para-II, the amount of special pay, actually drawn by a pensioner at the time of his/her retirement/death, was counted for computing pension. It was further pleaded that with respect to pre 1.1.1986 retirees, there basic pay was the basis for a notional revision of scale of pay and as special pay is a separate component of emoluments, taken into consideration, for computing pension, the Government was justified in confining the benefit of special pay to the pay actually drawn by pre 1.1.1986 retirees.

After considering the respective stands, the learned Single Judge held that the IIIrd Pay Commission recommended that the existing rate of special pay wherever already attached with the existing scale of pay shall stand doubled but the maximum limit was fixed at Rs.500/- and the said relief would be applicable to pre 1.1.1986 retirees. It was further held that the interpretation, placed by the State of Punjab, on the recommendations of the IIIrd Punjab Pay Commission that the pre 1.1.1986 retirees would be assigned the special pay, actually drawn, was unwarranted. Consequently, the writ petition was allowed and the appellants were directed to grant benefit to pre 1.1.1986 retirees of special

pay, as calculated, on the basis of recommendations of the IIIrd Punjab Pay Commission, while fixing notional emoluments.

Counsel for the appellants contends that as recommendation of the Pay Commission was applicable from 1.1.1986, and the respondent had retired prior to the said date, the Government rightly held that emoluments of pre 1.1.1986 retirees would be calculated, by taking into consideration the special pay actually drawn and not the special pay, as recommended by the IIIrd Punjab Pay Commission. It is contended that the IV th Punjab Pay Commission clarified this aspect, as is apparent from the instructions, issued in respect thereof and, consequently, the learned Single Judge erred, while holding that the benefit of special pay, granted by the IIIrd Punjab Pay Commission would be available to pre 1.1.1986 retirees. It is argued that the Government fixed a cut of date for applicability of the recommendation regarding special pay. The cut of date was based upon a rational and logical differentia and, therefore, should have been accepted by the learned Single Judge. It is further contended that as the interpretation, assigned by the Government, is in consonance with the recommendations of the IIIrd Pay Commission, the learned Single Judge was not justified in setting aside the interpretation and allowing the writ petition.

Counsel for the respondent, on the other hand, contends that the question is not about the power of the Government to fix a cut of date or about the rationale or logic underlying the decision for accepting the recommendation with respect to the fixation of notional payscale but restricting the special pay to the pay, actually drawn on the date of retirement. It is contended that there is no rationale of the aforementioned distinction, more particularly when the other benefits have been granted to

pre 1.1.1986 retirees, while effecting a notional revision of their payscale for the purpose of computing pension. It is contended that special pay forms a part of emoluments, the State of Punjab erred, while creating an artificial distinction and restricting special pay to Rs.200/-.

We have heard learned counsel for the parties and perused the paper book.

The controversy, in brief, is whether pre 1.1.1986 retirees would be entitled to special pay, actually drawn or the special pay as recommended by the IIIrd Punjab Pay Commission i.e double the actual special pay, subject to a maximum of Rs.500/-. The learned Single Judge, upon an appraisal of the IIIrd and IV th Punjab Pay Commission's reports, the instructions and the clarifications issued thereafter, held that there was no rationale for denying the benefit of special pay, conferred by the IIIrd Punjab Pay Commission to the respondent. We fail to comprehend any rationale or logic behind the instructions/clarifications, issued by the State Government. It is not denied that the payscale, drawn by pre 1.1.1986 retirees, was notionally refixed, in accordance with the recommendations of the IIIrd Punjab Pay Commission. This notional refixation, forms the basis of the revised pensionary benefits, paid to all pre 1.1.1986 retirees. Thus, for the State to deny benefit to pre 1.1.1986 retirees, of the recommendations with respect to special pay, belies comprehension. The IIIrd Punjab Pay Commission recommended that the element of special pay shall be doubled subject to a maximum of Rs.500/-. Though the recommendations were made applicable from 1.1.1986, there was no justification for confining the benefit with respect to special pay to post 1.1.1986 retirees. The IIIrd Punjab Pay Commission did not draw any

distinction between pre and post 1.1.1986 retirees. As their pension was fixed, after notional calculation of emoluments, drawn on 1.1.1986, the respondent could not be denied the benefit of a notional fixation of special pay. It is not the Government's case that payscale of pre 1.1.1986 retirees was not revised. In this situation, we find no reason for the State Government to have issued instructions confining benefit of revised special pay to post 1.1.1986 retirees. The power of the State to fix a cut of date, cannot be doubted. Where, however, recommendations of the IIIrd Punjab Pay Commission have been accepted without any caveat with respect to special pay, the Government had no right to subsequently confine the benefit regarding special pay to the amount actually drawn, thus, depriving the pre 1.1.1986 retirees of the benefit of recommendations of the IIIrd Punjab Pay Commission. We are satisfied that the impugned judgment is legal and valid and does not suffer from any error of law.

In view of what has been noticed herein above, the present appeal is dismissed, and CWP Nos.9646 of 2000 and 539 of 2001 are allowed in the same terms, as CWP No.15384 of 1999 was allowed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

May , 2007
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